

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Tom Emmer,

Complainant,
vs.

ORDER OF DISMISSAL

Chris Brazelton, Brazelton for House,
and Lorrie Adams, Chair of Brazelton
for House,

Respondents.

On November 10, 2008, Tom Emmer filed a Complaint with the Office of Administrative Hearings alleging a violation of Minn. Stat. § 211B.06 by Chris Brazelton, Brazelton for House, and Lorrie Adams as Chair of Brazelton for House. Brazelton ran against Emmer to represent House District 19B. The Chief Administrative Law Judge assigned this matter to the undersigned Administrative Law Judge (ALJ) on November 10, 2008, pursuant to Minn. Stat. § 211B.33. A copy of the Complaint and attachments were sent by United States mail to the Respondents on November 10, 2008.

After reviewing the Complaint and attachments, the Administrative Law Judge finds that the Complaint does not state a prima facie violation of Minn. Stat. § 211B.06.

Based upon the Complaint and the supporting filings and for the reasons set out in the attached Memorandum,

IT IS ORDERED:

That the Complaint filed by Tom Emmer against Chris Brazelton, Brazelton for House, and Lorrie Adams, Chair of Brazelton for House, for violation of Minn. Stat. § 211B.06, is **DISMISSED**.

Dated: November 12, 2008

s/Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

NOTICE

Under Minn. Stat. § 211B.36, subd. 5 this order is the final decision in this matter and a party aggrieved by this decision may seek judicial review as provided in Minn. Stat. § 14.63 to 14.69.

MEMORANDUM

The Complaint alleges that an advertisement in support of Chris Brazelton published in the *Delano Herald*, the *Elk River Star News*, and the *Delano Eagle* contains false statements of fact in violation of Minn. Stat. § 211B.06. The advertisement states that during a candidate forum on health care on September 30, 2008, Emmer advocated to:

Get rid of Medicare

Get rid of Minnesota Care

Get rid of state regulations that protect us from unsavory out-of-state insurance companies

Get rid of employer-sponsored health care, leaving us at the mercy of agents who are paid commissions to sell you their insurance.¹

At the bottom of the advertisement is a disclaimer reading: “Not authorized by any candidate or any candidate’s committee. Paid for by SD 19 DFL, in support of Chris Brazelton. Lorrie Adams, Chair, 208 Lake Blvd. S. Buffalo, MN 55313.”

Emmer alleges the statement that he advocated “getting rid” of Minnesota Care is false information, because at the forum he advocated doing away with Minnesota Care and replacing it with a voucher program that would provide better benefits at a lower cost. When the *Delano Herald* published an article about the forum on October 6, 2008, it reported that Emmer advocated disbanding Minnesota Care, but the article did not specifically mention his replacement proposal. Emmer filed a complaint about the article, and the newspaper subsequently published a lengthy letter to the editor from Emmer with an editor’s note commenting that it was unfair to publish Emmer’s statement without adding the context or reasoning behind his position or his alternative plan for providing coverage.² Brazelton subsequently responded with her own letter to the editor.³ Emmer maintains that because of this sequence of events, the Respondents had to know the statement was false when they arranged to publish the advertisement.

Minn. Stat. § 211B.06 prohibits a person from intentionally participating in the preparation, dissemination, or broadcast of campaign material with respect to the personal or political character or acts of a candidate that is designed or tends to injure or defeat a candidate, and which the person knows is false or communicates to others with reckless disregard of whether it is false. As interpreted by the Minnesota Supreme Court, the statute is directed against false statements of fact. It is not intended to prevent criticism of candidates for office

¹ Attachment to Complaint.

² *Delano Herald*, October 20, 2008.

³ *Delano Herald*, October 27, 2008.

or to prevent unfavorable deductions or inferences derived from a candidate's conduct.⁴ In addition, expressions of opinion, rhetoric, and figurative language are generally protected speech if, in context, the reader would understand that the statement is not a representation of fact.⁵

As an initial matter, the Administrative Law Judge notes that Emmer appears to have incorrectly named the respondent parties. The advertisement provides that it was not authorized by any candidate or any candidate's committee and that it was paid for by the Senate District 19 DFL. Lorrie Adams is identified as chair of the SD 19 DFL, not as chair of the Brazelton Committee. The Complaint alleges no facts disputing the attribution as stated in the advertisement. Ordinarily, the OAH would dismiss without prejudice a complaint appearing to name the wrong party and permit the complainant to re-file a new complaint without payment of another filing fee. In this case, however, the materials provided by Emmer make it clear that, even if the correct party had been named, the complaint would not survive *prima facie* review.

The statement at issue in this matter, that the Complainant advocated getting rid of Minnesota Care, is true. The Complainant maintains that the reason he took this position was because he advocated a different program that would provide better benefits at a lower cost. The advertisement does not refer to the Complainant's reasons for making the statement. The failure to include the Complainant's reason for making the statement, however, does not provide the basis for a complaint under Minn. Stat. § 211B.06. There is no requirement that campaign material be thorough or complete. Minnesota's appellate courts have repeatedly held that the statute is not broad enough to prohibit incomplete and unfair campaign statements, even those that are clearly misleading.⁶ Accordingly, this matter must be dismissed.

K.D.S.

⁴ *Kennedy v. Voss*, 304 N.W.2d 299 (Minn. 1981); *Hawley v. Wallace*, 137 Minn. 183, 186, 163 N.W. 127, 128 (1917); *Bank v. Egan*, 240 Minn. 192, 194, 60 N.W.2d 257, 259 (1953); *Bundlie v. Christensen*, 276 N.W.2d 69, 71 (Minn. 1979) (interpreting predecessor statutes with similar language).

⁵ *Jadwin v. Minneapolis Star and Tribune Co.*, 390 N.W.2d 437, 441 (Minn. App. 1986), *citing Old Dominion Branch No. 496, National Assoc. of Letter Carriers v. Austin*, 418 U.S. 264, 284-86 (1974); *Greenbelt Coop. Publishing Assoc. v. Bresler*, 398 U.S. 6, 13-14 (1970). See also *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 16-17 (1990); *Diesen v. Hessburg*, 455 N.W.2d 446, 451 (Minn. 1990); *Hunter v. Hartman*, 545 N.W.2d 699, 706 (Minn. App. 1996);

⁶ See *Bundlie v. Christensen*, 276 N.W.2d at 71 (statements telling only one side of the story, while unfair and unjust, were not untrue and therefore not actionable under predecessor statute).